

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 131 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

SUNISHA SIDDHARTH FAMILY TRUST

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Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner  
SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 11/11/98

ORAL JUDGEMENT (per R. Balia, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'B', has submitted a consolidated statement of case for Assessment Years 1976-77 and 1977-78 and referred the following question arising out of its composite appellate

order for two appeals:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the cancellation of the assessments framed by the ITO as per the directions of the Commissioner of Income-tax made in his orders passed u/s 263 of the Income-tax Act, 1961?"

2. Obviously, as the question suggests, it refers to validity of assessment order framed by the Income-tax Officer in pursuance of directions contained in the order of the Commissioner of Income-tax passed under sec. 263 of the Act revising the original assessment order. The ITO, while framing original assessment, has found the respondent assessee's claim justified that it is a trust in which beneficiaries have a determinate share and the trustees are under an obligation to distribute the income periodically. Therefore, Sec. 164 was not applicable. The CIT, holding the view that the order is erroneous and prejudicial to the interest of the Revenue, in exercise of his powers under sec. 263, set aside the original assessment order in revision and directed the Assessing Officer to frame assessment for the assessment years in question afresh. The order of CIT under sec. 263 was challenged before the Income Tax Appellate Tribunal successfully by the assessee and the order was set aside. However, before the order was set aside, the ITO, in pursuance of the direction contained in under under sec. 263, had passed the assessment order afresh implementing those directions. The order of the Tribunal setting aside the order of CIT under sec. 263 had been made the subject-matter of reference in respect of these two assessment years in Income Tax Reference No. 107/82 which had been decided by this court on 17.10.1994 following the decision given in CIT v. Tanvi Sajani Family Trust reported in 209 ITR 497 and this court upheld the order of the Tribunal and answered the question referred to this court in affirmative, in favour of the assessee and against the Revenue.

3. Thus, the order of CIT revising the original assessment orders does not survive. The assessee had preferred appeals against the fresh assessment order also which was set aside by the CIT (Appeals) on the ground that, as the order under sec. 263 has been set aside by the Tribunal, no fresh assessment order can come in pursuance thereof to supercede the original assessment order which in that event would survive. That order has been affirmed by the Tribunal. Since at the time when the order was made by the Tribunal in appeals against

fresh assessment orders, reference relating to order under sec. 263 passed by the CIT was pending before this court, the aforesaid question has been referred to see that in case the order under sec. 263 is restored, the question arising out of fresh assessment order may survive.

4. As noticed above, since this court has answered the questions in ITR No. 107/82 against the Revenue and in favour of the assessee upholding the correctness of the order of the Tribunal in setting aside the order under sec. 263, we are of the opinion that a fresh assessment order which has come into existence only as a consequence of and in exercise of directions contained in that order also cannot survive. The effect of setting aside of the order under sec. 263 would be as if the original order passed by the ITO remains in force to govern the assessment of the assessee for the relevant assessment year. The mere fact that assessment has been made in pursuance of order under sec. 263 does not take away the right of the assessee to challenge the validity of the order under sec. 263 and get its adjudication.

5. We accordingly answer the question referred to us in affirmative, that is to say, against the Revenue and in favour of the assessee. There shall be no order as to costs.

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